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Before the  
**FEDERAL COMMUNICATIONS COMMISSION** MAR 18 1996  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Telecommunications Services	)	CS Docket No. 95-184
Inside Wiring	)	
	)	
Customer Premises Equipment	)	

**COMMENTS OF AT&T CORP.**

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## **SUMMARY**

In these Comments, AT&T supports the establishment of uniform demarcation point rules, for both telephony and cable, that afford competitive service providers easy and equal access to the interface with the customer. Continuing to use different demarcation points for telephone and cable inside wire would be confusing to customers as each industry enters the business of the other, and would inhibit the growth of competition, especially as providers become able to offer both telephone and cable services over a single wire. Accordingly, for single family dwellings, the single demarcation point should be just outside (but within 12 inches) of the customer's residence. The common demarcation for multiple dwelling units also should be set to provide ready accessibility to competitive service providers and minimal inconvenience to consumers. AT&T believes that point is where the wire or cable is solely dedicated to serving a single unit.

Further, AT&T recommends that the Commission harmonize its regulation of customer access to inside cable wiring with its existing regulations governing customer access to inside telephone wiring. The current rights of telephony customers to access their inside wiring have benefited consumers by providing them lower rates and greater choice. The Commission should take steps in this proceeding to extend these same benefits to cable subscribers. Although existing rules require cable operators to offer inside wire for sale to subscribers upon termination (or to remove or abandon such wiring) and thus promote customer access to, and control of, their inside wiring, these rules are

not well understood, and customers today are ill-informed of their rights to their inside cable wiring. To eliminate this confusion, and to promote competitive choice in cable (and joint cable/telephony) services, AT&T recommends that the Commission establish a rebuttable presumption that all cable subscribers have acquired title to (or at a minimum, access to and control over) their inside wiring.

AT&T's comments also demonstrate that the Commission has ample statutory authority to designate the demarcation point for both telephony and cable inside wiring as well as to specify the rights of customers to access and control the wiring dedicated to serving their premises.

Finally, AT&T supports extending all signal leakage rules currently applicable to cable service to broadband common carrier services, extending the Commission's telephone connection specification requirements to broadband connections to the telephone network, and preempting state regulations that are inconsistent with the Commission's modified inside wire rules, as proposed herein.

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**COMMENTS OF AT&T CORP.**

Pursuant to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding,<sup>1</sup> AT&T Corp. ("AT&T") provides these comments on the Commission's proposed modifications to its inside wiring rules for telephony and cable services. AT&T supports uniform demarcation point rules for telephony and cable wiring in recognition of the reality that the differences in the technologies and service offerings of telephone companies and cable operators "are dissolving as technology advances and the marketplace changes." NPRM at ¶ 2. Specifically, AT&T advocates a uniform single dwelling unit rule that sets demarcation -- i.e., the point at which customer access to the telephone wire or cable begins -- just outside the point that wire or cable enters the customer's premises. Similarly, AT&T supports a uniform multiple dwelling unit

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<sup>1</sup> Telecommunications Services Inside Wiring Customer Premises Equipment, Notice of Proposed Rulemaking, CS Docket No. 95-184, released January 26, 1996.

rule that sets demarcation at a point outside the customer (i.e., tenant's) premises where the customer's serving wire or cable is separately identifiable and accessible (typically the communications closet nearest to the customer). In connection with these demarcation point modifications, AT&T also recommends that the Commission take steps to harmonize its regulation of customer access to inside cable wiring with its existing regulations governing customer access to inside telephone wiring.

AT&T also supports: (1) the extension of the Commission's cable television signal leakage rules to other broadband services (including cable telephony) that use the same frequencies; (2) the extension of the Commission's telephone jack technical specification requirements to broadband connections to the telephone network; and (3) the preemption of state regulations that are inconsistent with the Commission's modified inside wire rules and threaten effective competition among all service providers.

## **I. INTRODUCTION**

The current telephone and cable inside wiring rules were developed in separate proceedings when telephone companies typically provided only telephone services (through "twisted pair" copper wiring) and cable operators typically provided only video programming services (through coaxial cable). See NPRM at ¶¶ 2. However, as the Commission recognizes, this dichotomy -- where telephone companies provide only telephony and cable operators provide only video programming -- is rapidly disappearing as each enters the business of the

other. See id. The current disjunction between cable and telephony inside wire requirements is clearly inappropriate and anticompetitive in an environment where a provider is able to offer both telephony and cable services over a single wire or cable.

Indeed, even as to the current provision of telephone and cable services over separate media, the existing inside wire rules create substantial confusion and inefficiency. The current rules set different requirements not only for different services, but also for different recipients of the same service. For example, the determination of telephone demarcation points in multiple dwelling units existing as of August 13, 1990 is left to each individual carrier's "reasonable and nondiscriminatory standard operating practice."<sup>2</sup> Entirely different rules apply to telephone installations in new multiple dwelling units and to cable and telephone installations in single dwelling units.<sup>3</sup> In addition to causing customer confusion,

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<sup>2</sup> See Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, Report and Order and Further Notice of Proposed Rulemaking, 5 FCC Rcd. 4686, 4693-94 (1990).

<sup>3</sup> See, e.g., 47 C.F.R. 68.3(b)(1) (demarcation point for new multiple dwelling unit telephone installations); id. § 76.5(mm)(1) (demarcation point for single unit cable installations); id. § 68.3(a) (demarcation point for single unit telephone installations). Indeed, there is not even a uniform rule for single unit telephone installations. If the installation includes a "protector" -- i.e., a bidirectional overcurrent protection device that, inter alia, functions as a lightning arrestor -- the demarcation point is within 12 inches of the protector. If there is no protector, the demarcation point is within 12 inches of where the telephone wire enters the customer's premises.

such variations significantly impede the development of competition by inflating competitive service providers' installation expenses and by erecting artificial barriers to equal access to customer premises.

AT&T believes that these problems are best addressed by establishing uniform demarcation and customer access rules and principles. Accordingly, although AT&T offers brief comments on the issues of signal leakage, means of connection, and preemption, AT&T's initial comments focus primarily on the establishment of uniform demarcation and customer access rules.

The modest rule modifications supported by AT&T – which the Commission has ample statutory and constitutional authority to require – are easily implemented and administered and will foster both increased competition among service providers and decreased consumer confusion and expense.

## **II. DEMARCATIION**

The Commission, noting the differing demarcation approaches that exist for telephony and cable, seeks comment on whether there should be a "common" demarcation approach for all wireline communications. See NPRM at ¶ 12. AT&T supports the establishment of common or uniform demarcation rules for telephony and cable (regardless of the technical characteristics of the medium – i.e., broadband or narrowband) that afford competitive service providers easy – and equal – access to the point of interface. No logical purpose can be served by creating an arbitrary distinction based on bandwidth. Rather, as technologies and service offerings converge, those services and technologies should be



regulated symmetrically based on a set of common demarcation principles designed to promote the competition among service providers that will benefit consumers of all services.

**A. Proposed Modifications**

With regard to single dwelling units, AT&T supports demarcation outside the customer's premises. It is beyond serious dispute that setting the demarcation point inside the customer's premises -- as the current telephony inside wire regulations do<sup>4</sup> -- negatively impacts competition. When the demarcation point is located inside the customer's premises, a change in service provider necessitates entry by the new provider into the customer's home to install and test the new service, even if the inside wiring is not changed.<sup>5</sup> The customer's natural reluctance to incur the inconvenience and expense of such entry inevitably creates an "inertia" that gives the incumbent provider a distinct advantage over its competitors.

The establishment of a demarcation point outside the residence, by contrast, largely eliminates this inherent preference by removing much of the customer involvement in (and inconvenience in connection with) the installation/removal processes. This approach further benefits consumers by

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<sup>4</sup> See 47 C.F.R. § 68.3(a).

<sup>5</sup> Indeed, a change in provider could well require entry by both the incumbent provider (to remove facilities) and the new provider (to install facilities).

enabling service providers, both telephony and cable, to make repairs and test their equipment without disturbing residents. And this ease of access should also permit service providers to maintain, repair, and upgrade service more efficiently and effectively.

Accordingly, AT&T recommends that the Commission establish a uniform demarcation point for every single dwelling unit wire or cable (narrowband or broadband) just outside (but within 12 inches) of the customer premises. This proposed common demarcation point is consistent with the current rule for cable services to single family homes. And the telephony single dwelling unit rule need only be modified slightly to move the demarcation point from just inside the customer's premises to the network interface unit ("NIU"), which is typically located just outside the customer's premises.<sup>6</sup> An NIU-based demarcation point is easily identified and thus an NIU-based demarcation rule will be easy to administer, as well as providing the most competitively neutral location for competing service providers to access the customer.<sup>7</sup>

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<sup>6</sup> The NIU generally contains a telephone company-installed protector. Consequently, the NIU should be treated as a protector for purposes of Section 68.3(a) of the Commission's Rules, 47 C.F.R. § 68.3(a). Although the Commission's Rules prohibit customers from accessing protectors, see 47 C.F.R. § 68.213(b), AT&T's proposal would not require customer access to the protector. Rather, the connection between the customer's inside wire and the service provider's system would take place through a standard connection at the NIU itself.

<sup>7</sup> For this reason, the Commission should expressly provide that the demarcation point for every wire or cable used to provide telephony services -- whether narrowband or broadband -- is at the NIU.

The same principles -- ready accessibility by competitive service providers and minimal inconvenience to consumers -- should govern the uniform demarcation rule for multiple dwelling units. Both goals are furthered by a rule that sets demarcation at the first readily accessible point where the wire or cable is solely dedicated to serving a single unit (generally a communications closet). Setting demarcation at that point gives competitive service providers access to individual subscriber's wires, which can be detached from the incumbent's common wires, without causing disruption in the subscriber's home or the building's common areas and without interfering with the incumbent's provision of service to other residents of the building.

Selecting a demarcation point for both telephony and cable at the communications closet (or other easily accessible location) nearest to the individual tenant's separately identifiable serving wire or cable will also greatly enhance competitive alternatives for consumers. The current system, in which demarcation requirements may differ from building to building depending upon, inter alia, the age of the building,<sup>8</sup> the carrier's or operator's operating practices,<sup>9</sup> or the building owner's preferences,<sup>10</sup> and in which demarcation points may be

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<sup>8</sup> See 47 C.F.R. § 68.3(b).

<sup>9</sup> See id. § 68.3(b)(1).

<sup>10</sup> See id. §§ 68.3, 68.3(b)(2) (if telephone carrier does not establish minimum point of entry standard operating practice, building owner may establish demarcation points).

within or without the tenant/customer's premises,<sup>11</sup> creates a significant barrier to efficient competition. The proposed uniform multiple dwelling unit demarcation rule, by contrast, will promote equal access to individual tenant's wiring and will require only minor changes to existing cable and telephony demarcation practice (and in some buildings no change at all).

In connection with its modification of existing demarcation rules, AT&T recommends that the Commission also take steps to harmonize its regulation of customer access to inside cable wiring with its existing regulations governing customer access to inside telephone wiring. Efficient competition requires that all customers have access to and control of all inside wire (i.e., all wire on the customer side of the demarcation point) regardless of the service being provided and regardless of the medium used to transmit that service. The Commission has already largely achieved this goal with respect to narrowband wiring, and AT&T supports the Commission's tentative conclusion that there is no reason to change its existing rules giving telephony consumers the right to access their narrowband wiring inside the demarcation point. See NPRM at ¶ 42.<sup>12</sup> Those rules have

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<sup>11</sup> See id. §§ 68.3(b)(1)-(2) (demarcation point for any particular telephony customer may not be deeper than 12 inches inside of the customer's premises); id. § 76.5(mm) (demarcation point for cable customer 12 inches outside of customer's premises).

<sup>12</sup> The Commission should, of course, clarify that narrowband consumers will continue to have access to and control of all wire inside the demarcation point even after that demarcation point is moved.

served the public interest, producing enormous customer benefits in the form of lower rates and greater choice, with no significant adverse effects on safety, network operation or telephone company earnings.<sup>13</sup>

The Commission's existing rules requiring cable operators to offer their customers the right to purchase inside wire upon termination of service (and to remove or abandon the inside wire if the customer elects not to purchase) represent a first step in promoting the goal of customer access to, and control of, inside wiring.<sup>14</sup> Two providers generally do not simultaneously provide broadband service through a single cable and thus switching to a new broadband provider more often than not requires terminating service with the incumbent provider, thereby triggering the right to purchase inside wire (at nominal cost). AT&T therefore recommends that the Commission retain these inside wire termination rules.

However, the current inside wire termination rules often lead to considerable customer confusion over ownership of their inside wire, and such

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<sup>13</sup> See Detariffing the Installation and Maintenance of Inside Wiring, Second Report and Order, CC Docket No. 79-105, 50 Fed. Reg. 13991 (April 9, 1985) ("Second Report and Order") (deregulating inside telephone wire promoted Commission's objectives of increasing competition, promoting new entry, producing cost savings that benefit ratepayers, and creating an unregulated competitive marketplace conducive to telecommunications development); Detariffing the Installation and Maintenance of Inside Wiring, Memorandum Opinion and Order, 1 FCC Rcd. 1190 (1986) ("Detariffing Inside Wire Order II").

<sup>14</sup> See 47 C.F.R. § 76.802.

confusion can discourage competition among service providers. AT&T, therefore, further recommends that the Commission establish a rebuttable presumption that through the operation of, inter alia, the Commission's existing rules and state laws, all cable subscribers have acquired title to (or at a minimum access to and control over) their inside wiring. In conjunction with application of the existing service termination rules on a going forward basis, this new proposal will go a long way toward confirming customer ownership and control over inside wiring, and thus free consumers from economic ties to incumbent service providers which can inhibit development of competition.

**B. Technical Feasibility**

AT&T is aware of no technical impediments to the modest demarcation and customer access changes it supports.<sup>15</sup> To the contrary, the proposed rules establishing uniform demarcation principles will greatly simplify installation, maintenance and repair of the relevant cable and telephony facilities.

**C. Statutory Authority**

The Commission has ample statutory authority to designate the demarcation point for both telephony and cable service inside wiring, as well as to specify the rights customers should enjoy to access and control wiring on their

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<sup>15</sup> See also Liberty Cable Company, Inc., Petition for Reconsideration, pp. 2, 4-5, Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Cable Home Wiring, 8 FCC Rcd. 1435 (1993) ("Cable Home Wiring Order") (proposing demarcation point for multiple dwellings outside customer premises and within common areas).

side of the demarcation boundary. The Commission's clear authority to set the demarcation point for inside wiring used to provide telephone services was recognized by the D.C. Circuit in NARUC v. FCC, 880 F.2d 422 (D.C. Cir. 1989). In approving the Commission's prior orders detariffing telephone inside wire installation and maintenance,<sup>16</sup> the Court "agreed[]" that the Commission's "policy" of "encourag[ing] competition in the provision, installation, and maintenance of inside wiring . . . is consistent with the goals of the Act," and specifically held that "[the Commission] has the authority to implement this policy with respect to interstate communication." NARUC, 880 F.2d at 429 (citing United States v. Southwestern Cable Co., 392 U.S. 157, 178 (1968)). The Commission's judicially confirmed authority to establish the initial demarcation points for telephone inside wiring clearly encompasses the authority to adopt the modest modifications that AT&T has proposed.<sup>17</sup>

The Commission also unquestionably has authority to modify its demarcation point rules governing inside wiring used to deliver broadband

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<sup>16</sup> See Second Report and Order at ¶¶ 55, 56 (invoking statutory authority under 47 U.S.C. §§ 151, 154(i), 154(j), 201-05, 220 and 221(c)).

<sup>17</sup> Section 259(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996), which requires the FCC to "prescribe . . . regulations that require incumbent local exchange carriers . . . to make available to any qualifying carrier . . . such telecommunications facilities and functions as may be requested by such qualifying carrier," provides additional statutory authority for regulation of telephone inside wiring directed at increasing its accessibility to competitive providers.

services and to increase customer access to and control over that inside wiring. When a single inside wire is used to provide both telephone and cable service, it is, of course, impossible to designate a discrete portion of that wire as being used exclusively for non-telephony services. Thus, "[a]s telephone companies and cable operators upgrade their systems" to carry telephony and video programming services "over a single wire," NPRM at ¶ 2, the Commission's authority to regulate telephone inside wiring provides a sufficient basis for similarly determining the demarcation point applicable to other "cable" services.

Further, the Commission's explicit statutory authority to "prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber," 47 U.S.C. § 544(i), provides abundant authority for the Commission's proposal, which AT&T supports, to "create a presumption that the subscriber owns his or her cable inside wiring," NPRM at ¶ 48, and thus for associated modifications of the cable demarcation rules.

As the Commission has found, subscribers often acquire ownership of their inside wiring, either because (1) the previous occupant purchased the wiring upon voluntary termination, (2) as often happens, the cable operator abandoned the wiring, (3) the subscriber paid for the wiring upon installation, or (4) state law treats the wiring as a "fixture." *Id.* Especially in light of the frequency with which individuals change residences, it is therefore perfectly proper for the Commission, based upon those findings, to create a presumption that as a consequence of prior terminations subscribers already own their cable home wiring. And the



explicit statutory authority to determine the disposition of cable home wiring after termination of service necessarily includes the authority, not only to designate the demarcation point at which control would transfer upon termination, but also to determine the consequences of prior customer terminations or service provider abandonments. In any event, the Commission plainly needs no additional authority beyond that which it has already exercised in creating the existing cable home wiring rules to implement AT&T's proposals that it retain its existing demarcation rules with regard to single dwelling units, and modify the rules applicable to multiple dwelling units so as to give individual subscribers control over the entire cable dedicated to serving only their premises.<sup>18</sup>

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<sup>18</sup> In authorizing the Commission to provide for the disposal of cable wire "within the premises of [a] subscriber," 47 U.S.C. § 544(i), Congress plainly intended to exclude only "common wiring within [a multiple dwelling] building" from the statute's reach. H.R. Rep. No. 628, 102d Cong., 2d Sess., at 118 (1992) (emphasis added). The entirety of the portion of cable within a multiple dwelling unit that is dedicated to serving the premises of one particular subscriber is thus "within the premises of such subscriber" as that term is used in Section 16(d) of the 1992 Cable Act. 47 U.S.C. § 544(i). Indeed, any other construction would frustrate Congress' "goal" in adopting § 16(d) to "foster[] competition among providers" of cable service, see Cable Home Wiring Order (¶ 12), by permitting subscribers "to subsequently utilize that wiring for an alternative video programming service." Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Cable Home Wiring, First Order on Reconsideration and Further Notice of Proposed Rulemaking, MM Docket No. 92-260, ¶ 17, released January 26, 1996. As the Commission acknowledged in its NPRM, the current demarcation point for multiple dwelling unit buildings frustrates that Congressional purpose, because that point is generally either practically or physically inaccessible. NPRM at ¶ 9.

In short, the Commission clearly has adequate authority to adopt a common demarcation rule that would govern both cable and telephony inside wiring, and that would give subscribers control over the wiring on their side of the demarcation point.

**D. Constitutional Authority**

The Commission also seeks comment on potential "takings" implications of modifications to its inside wire rules. See NPRM at ¶ 51. Under settled law, the Commission's exercise of its broad statutory authority to implement the modifications supported by AT&T will in no way implicate the Takings Clause of the Fifth Amendment to the Constitution.

As an initial matter, as the Commission found in both its Second Report and Order (¶ 46) and its Cable Home Wiring Order (¶ 9) regulating the use of inside wire is not a "permanent physical occupation of property" that implicates the per se takings rule of Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 441 (1982). The Supreme Court has made plain that the Loretto rule applies only when government authorizes the occupation (or takes title) to real property (or deprives that real property of all economically beneficial use), and not when it merely regulates commercial personal property like the wiring at issue here. See Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1027-28 (1992) ("in the case of personal property, by reason of the State's traditionally high degree of control over commercial dealings, [an owner] ought to be aware of

the possibility that new regulation might even render [its] property economically worthless").<sup>19</sup>

Accordingly, any constitutional challenge to the Commission's regulation of such personal property would be analyzed -- and rejected -- under the lenient standard employed for "the regulation of rates chargeable from the employment of private property devoted to public uses." FCC v. Florida Power Corp., 480 U.S. 245, 253 (1987) (citing Permian Basin Area Rate Cases, 390 U.S. 747, 768-69 (1968)). It is well settled that agencies may administer regulatory programs "adjusting the benefits and burdens of economic life to promote the common good," even those "that adversely affect recognized economic values." Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104, 124 (1978). See also Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 413 (1922) ("Government hardly could go on if to some extent values incident to property could not be diminished without paying for every change in the general law").

This is especially true in the context of economic regulation of utilities. See Duquesne Light Co. v. Barasch, 488 U.S. 299, 307 (1989) (the "partly public, partly private status of utility property creates its own set of questions under the Takings Clause"). As the Supreme Court explained in the landmark case of

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<sup>19</sup> See also Yee v. City of Escondido, 503 U.S. 519, 522 (1992); Andrus v. Allard, 444 U.S. 51, 66-67 (1979) (absolute prohibition on the sale of eagle feathers not a taking); Everad's Breweries v. Day, 265 U.S. 545, 563 (1924) (statute prohibiting the sale of liquor not a taking).

FPC v. Hope Natural Gas Co., 320 U.S. 591, 601 (1944), the mere "fact that the value [of a utility's property] is reduced does not mean that the [rate] regulation is invalid." Indeed, there can be no constitutional claim unless the regulatory burden imposed by the agency is so severe that it "jeopardize[s] the financial integrity of the [regulated] companies, either by leaving them insufficient operating capital or by impeding their ability to raise future capital." Duquesne, 488 U.S. at 312. And regardless of the economic impact on the utility, "[i]f the total effect of the [regulatory] order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end." Hope, 320 U.S. at 602.

There could be no serious takings challenge under this standard to the proposed inside wire modifications. This fine-tuning and harmonization of the Commission's cable and telephone inside wire rules -- resulting in changes that will most often be measured in inches -- will have a de minimis economic effect on the incumbent providers. See Jersey Cent. Power & Light Co. v. FERC, 810 F.2d 1168, 1181 n.3 (D.C. Cir. 1987) (en banc) ("absent the sort of deep financial hardship described in Hope, there is no taking").<sup>20</sup> The Takings Clause would

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<sup>20</sup> Indeed, there may be no economic impact at all. Telephone common carriers have already recovered the full cost of the foot or so of "new" inside wire created by the change in demarcation point. See Detariffing the Installation and Maintenance of Inside Wiring, Further Notice of Proposed Rulemaking, 50 Fed. Reg. 13991 at ¶¶ 3-4 (1985) ("Detariffing Inside Wire Order") (inside wire cost recovered as an expense in the year incurred); Second Report and Order at ¶ 46 (noting that permitting common carrier service providers to collect compensation for consumer access to existing inside wire would in effect allow double recovery); id. (costs of removing inside wiring far exceed its salvage value). And, on a

therefore not be implicated even if the public interest benefits of the new rules were slight.<sup>21</sup>

And those rule changes promise not slight, but enormous, public interest benefits. The Commission has repeatedly recognized that there is a strong public interest in allowing consumers to obtain access to inside telephone and cable home wiring and in adopting rules that foster competition and consumer benefits

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(footnote continued from previous page)

going forward basis, common carrier service providers are able to recover the full cost of inside wire -- whatever the demarcation point -- through detariffed sales to subscribers. See Second Report and Order at ¶¶ 30-39; Detariffing Inside Wire at ¶¶ 6-9.

Similarly, the fact that cable companies generally do not exercise their rights to remove inside wire that subscribers choose not to purchase upon termination of service demonstrates that those utilities place little value upon that wiring. In any event, pursuant to the existing termination rules that AT&T urges the Commission to retain, cable subscribers that do not already own their inside wire must purchase inside wiring at the cable company's replacement cost upon termination. See 47 C.F.R. § 76.802. Thus, the only economic effect extending the demarcation point will have on incumbent cable providers is to increase the amount of cable actually purchased by consumers upon termination. See, e.g., United States v. Riverside Bayview Homes, Inc., 474 U.S. 121, 128 (1985) ("So long as compensation is available for those whose property is in fact taken, the governmental action is not unconstitutional.").

<sup>21</sup> The proposed rebuttable presumption regarding the ownership of inside cable wiring would raise no conceivable takings issue. Rather, that rule would merely aid the Commission in initially determining whether an incumbent cable provider actually owns the inside cable wiring at issue. Obviously, a party that does not own a piece of property cannot raise a takings challenge to regulation of that property.

by allowing alternative service providers to effectively compete with incumbents.<sup>22</sup>

Indeed, Congress itself explicitly noted its approval of the Commission's telephone inside wiring policy when enacting Section 16(d) of the 1992 Cable Act. See S. Rep. No. 92, 102d Cong., 2d. Sess. 23 (1992). Given these strong public interests the proposed rules are clearly reasonable and thus fully comply with the dictates of the Fifth Amendment.

### **III. MISCELLANEOUS ISSUES**

#### **A. Signal Leakage**

AT&T agrees with the Commission that the potential for harm that currently exists from the delivery of cable signals -- the disruption of aeronautical and public safety frequencies -- will also exist when telephony services are delivered over broadband frequencies. See NPRM at ¶ 24. Accordingly, AT&T supports extending all signal leakage rules currently applicable to broadband cable services to broadband common carrier services (including broadband telephony).<sup>23</sup>

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<sup>22</sup> See NPRM at ¶¶ 43-44, Detariffing Inside Wire at ¶¶ 6-13, Cable Home Wiring Order at ¶¶ 4-12.

<sup>23</sup> The existing rules set forth the maximum individual signal leakage limits for all cable operators using frequencies outside the broadcast television bands, and impose more stringent operating and monitoring requirements for cable system operating in the bands that are used by aircraft for communications and navigation. See 47 C.F.R. §§ 76.605(a)(11), 76.610-17. The rules further ensure that a subscriber's line is "capped-off" upon termination. Id.

**B. Means of Connection**

In anticipation that future telecommunication providers may deliver multiple telecommunications services over a single broadband wire, the Commission also seeks comment on whether technical standards for connections to such broadband services should be established. See NPRM at ¶ 30. As noted above, to the extent common carrier services are provided (either individually or in conjunction with cable services over a single broadband wire), the Commission has jurisdiction to regulate technical specifications for any interface with the existing narrowband telephone network. Pursuant to this authority, AT&T supports the development of stringent technical specification for any jacks used to interface between broadband common carrier services and the telephone network. As the Commission notes, such specifications are necessary to ensure network integrity, protect telephone employees, and facilitate the installation of equipment by subscribers. In addition, AT&T believes that setting a single standard will greatly promote competition for inside wiring services and telephone customer premises equipment.

**C. Dual Regulation**

As noted above, the Commission has express authority pursuant to the Communications Act to regulate any broadband facility providing common carrier services, even if the same facility is used to provide video services as well. Moreover, the Commission has authority to preempt any state regulation that negates the exercise of the Commission's lawful authority. See NARUC, 880 F.2d at 429. Although it recognizes the vital role that state and local governments

must continue to play in the regulation of cable and telephone services, AT&T recommends that the Commission exercise its preemptive authority to the extent necessary to ensure that these services are regulated consistently so that one service does not achieve an unfair competitive advantage over another. To that end, AT&T recommends that the Commission preempt any state or local regulation that has the effect of impeding the harmonization of telephone and cable regulation.

### CONCLUSION

WHEREAS, for the reasons stated above, the Commission should establish uniform demarcation point rules for telephony and cable wiring. For single dwelling units, the demarcation point should be established just outside the point that the service provider's wire or cable enters the customer's premises. Similarly, a uniform multiple dwelling unit rule should be established that sets the demarcation point outside the tenant's premises where the customer's serving wire or cable is separately identifiable and accessible. In connection with these modifications, the Commission should take steps to harmonize its regulation of customer access to inside cable wiring with its existing regulations governing customer access to inside telephone wiring, in particular by adopting a rebuttable presumption that all cable subscribers have acquired title to the inside wiring.

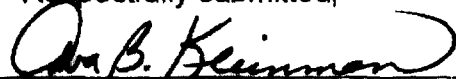
AT&T also supports applying the current signal leakage rules to broadband services that use the same frequencies as cable, using the Commission's telephone jack technical specification requirements for all



broadband connections to the telephone network, and preempting state regulations that are inconsistent with the Commission's modified inside wire rules, as proposed herein.

Respectfully submitted,

By



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